IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8251 OF 2006

Shri S.C. Mehta .... Petitioner
Vs.
Shri Kantilal J. Vora & Ors. .... Respondents

Sarvasri Bhavin Bhatia h/f Bipin Joshi
for the Petitioner.

Ms Shagufta Motani for the Respondent
Nos.2 to 4.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 22, 2006

P.C:

Heard. The petitioner challenges the order dated 17-1-2006 passed by the Appellate Bench of the Small Causes Court in Interim Notice No.1648 of 2005 in Appeal No.676 of 2004 arising out the decree passed in R.A.E. Suit No.851 of 1997. The contention on behalf of the petitioner is that the Appellate Bench could not have directed the deposit of Rs.1,500/- as mesne profit in the absence of necessary inquiry being held in accordance with the provisions of Order 20, Rule 12 of the Code of Civil Procedure. The contention is totally devoid of substance in as much as that the impugned order merely relates to interim arrangement during the pendency of the appeal and interim order does not relate to final pronouncement in relation to the liability to

pay the mesne profit in relation to the suit premises. Undisputedly, the trial Judge has passed the decree of eviction against the petitioner and the petitioner has sought to challenge the same in appeal. It is not the case of the petitioner that the petitioner is not liable to pay any compensation during the pendency of the appeal nor it can be the case of the petitioner that the petitioner can continue to possess the premises without paying any monetary compensation to the landlord for occupation thereof during the pendency of the appeal. Being so, merely because during the pendency of the appeal the Appellate Bench has directed the petitioner to deposit a sum of Rs.1,500/- per month in respect of the premises having an area of 160 sq.ft. at Matunga in Mumbai, there cannot be any justification for interference therein in writ jurisdiction under Article 227 of the Constitution of India. The matter is yet to be decided on merits by the lower Appellate Court and all the issues are kept open. With these observations, the petition is rejected.

(R.M.S. Khandeparkar, J.)

sjs/1222wp8251.6